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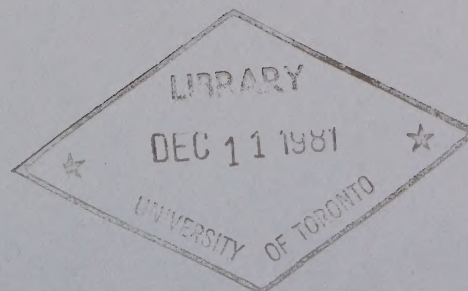
NATIONAL ENERGY BOARD REASONS FOR DECISION

In the Matter of Applications under
The National Energy Board Act of

Foothills Pipe Lines (Alta.) Ltd.

For the Taking of
Additional Lands

October 16, 1981



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NATIONAL ENERGY BOARD

IN THE MATTER of two applications, both dated the 25th day of May, 1981 by Foothills Pipe Lines (Alta.) Ltd. for Authority to take Additional Lands, required for the Construction, Maintenance and Operation of a Pipeline, pursuant to section 74 of the National Energy Board Act.

Northern Pipeline Agency Files No. 8266, No. 8267, No. 8268 and No. 8272.

Heard at the Town of Strathmore, in the Province of Alberta, on the 10th day of July, 1981.

BEFORE:

W.A. Scotland, Designated Officer
Northern Pipeline Agency,

pursuant to the powers, duties and functions delegated to him by the National Energy Board in its Order No. NPO-1-78 dated the 27th day of July, 1978.

APPEARANCES:

G.E. Anderson	Foothills Pipe Lines (Alta.) Ltd.
J.P. Petch	Foothills Pipe Lines (Alta.) Ltd.
N.E. Hall	Foothills Pipe Lines (Alta.) Ltd.
J.J. Armstrong	Landowner
Kees Jansen	Landowner
Frank & Louise Elliott	Landowners
Leonard D. Hartzler	Landowner
John L. Richter	Landowner
L.G. Ganne	Northern Pipeline Agency

BACKGROUND

The National Energy Board Act (NEB Act) provides, under section 73, that a pipeline company may, without the consent of the owner, take lands for right-of-way to a maximum breadth of sixty feet (18.288 m). Under section 74⁽¹⁾ of the same Act, a company may apply to the National Energy Board (the Board) for authority to take additional lands without the consent of the owner if such lands are required for the efficient construction, maintenance or operation of a pipeline or for constructing or taking any works or measures ordered by the Board.

The Northern Pipeline Act was enacted to establish the Northern Pipeline Agency (the Agency) to facilitate the planning and construction of a pipeline which has become known as the Alaska Highway Gas Pipeline (AHGP). Foothills Pipe Lines (Alta.) Ltd. [Foothills (Alta.)], a subsidiary of Foothills Pipe Lines (Yukon) Ltd., is the company which will own and operate the segments of the AHGP which are being constructed in Alberta.

Subsection 6(1) of the Northern Pipeline Act provides for the delegation of certain powers, duties and functions of the Board under the NEB Act to the Designated Officer of the Agency. The Board by its Order No. NPO-1-78⁽²⁾ delegated to William Alexander Scotland, Designated Officer and Deputy Administrator of the Agency its powers, duties and functions in respect of certain sections of the NEB Act including section 74 for the Canadian section of the AHGP. This hearing was conducted pursuant to those delegated powers.

-
- (1) See Appendix I
(2) See Appendix II

THE APPLICATIONS

Foothills (Alta.) applied to the Board in two separate applications for authority to take additional lands along its proposed right-of-way within Zone 6⁽³⁾ between kilometre posts 53.8 and 198.0, and between 356.5 and 358.4.

The applications would provide Foothills (Alta.) with a pipeline right-of-way and permanent working space of 29 metres (95.1 feet) in breadth. In addition, Foothills (Alta.), where required, is applying for 10.0 metres (32.8 feet) of temporary working space next to its right-of-way.

Foothills (Alta.) classified the additional lands applied for into three categories of linear land use:

Schedule "A" lands, being additional right-of-way on which Foothills (Alta.) may carry on pipeline construction and maintenance including ditching and installation of pipeline.

Schedule "B" lands, being additional right-of-way providing permanent working space adjacent to the sixty foot (18.288 metre) right-of-way, for which provision is made in section 73 of the NEB Act. The permanent working space lies entirely within an existing right-of-way of NOVA, AN ALBERTA CORPORATION (NOVA). The activities Foothills (Alta.) may conduct on the permanent working space are the normal pipeline construction and maintenance activities limited generally to surface use. Ditching and laying pipe in the ditch cannot be done.

Schedule "C" lands being temporary working space which would be used only during construction of the pipeline.

(3) Zone 6 is described in Annex II to Schedule I to the Northern Pipeline Act as the route from Caroline, Alberta to the Alberta-Saskatchewan Border near Empress, Alberta.

EVIDENCE

The two applications for additional lands are related to the 1982 construction phase of the Foothills (Alta.) pipeline and were heard together as one application.

Foothills (Alta.) stated that it required the additional lands because the lands, sixty feet (18.288 metres) in breadth, which are permitted to be taken for right-of-way of a pipeline under section 73 of the NEB Act, are insufficient to allow Foothills (Alta.) to efficiently construct, maintain or operate its 1,067 mm (42") diameter pipeline in accordance with accepted practices in the pipeline industry.

Foothills (Alta.) filed two diagrams showing its proposed right-of-way configurations for construction⁽⁴⁾.

Foothills (Alta.) stated that the 29 metres (95.1 feet) (See Figure 1) of Schedule "A" lands and Schedule "B" lands that it requires would be used as follows:

- (a) 2.0 metres (6.6 feet) for the ditch to accommodate the pipe.
- (b) 6.2 metres (20.3 feet) on which to place subsoil removed from the ditch during construction and any maintenance of the pipeline.
- (c) 3.8 metres (12.4 feet) in order to facilitate preservation of topsoil removed from the ditch during construction and any maintenance of the pipeline.
- (d) 6.0 metres (19.7 feet) for the assembling and welding of the pipe prior to installation during construction and any maintenance of the pipeline.

(4) See Figures 1 and 2.

- (e) 6.1 metres (20 feet) for the operation of lifting requirement engaged in the construction and any maintenance of the pipeline.
- (f) 4.9 metres (16.1 feet) to allow for the passage of vehicles and other machinery during construction and any maintenance of the pipeline.

The 29 metre (95.1 feet) right-of-way width is required in areas requiring only minimal grading. Foothills (Alta.) stated that it will require an additional temporary working space of 10 metres (32.8 feet) for the placement of additional topsoil and grading material in areas where a more significant amount of grading must take place (see Figure 2).

Foothills (Alta.) has adopted a pipeline corridor concept for the location of its pipeline which, it stated, has substantially reduced its overall land requirements. Foothills (Alta.), where possible, has located its pipeline immediately adjacent to the right-of-way of NOVA and proposes to use up to a maximum of 8.66 metres (28.44 feet) of the NOVA right-of-way for permanent working space.

Mr. J.J. Armstrong, appearing on his own behalf, questioned Foothills (Alta.) about its proposed use of the by-pass area indicated on the right-of-way configuration diagrams (Figures 1 and 2). Mr. Armstrong, in a written submission, and in his appearance objected to the use of "Temporary Working Space" in relation to the manner and amount of compensation a landowner would receive from Foothills (Alta.).

Mr. Kees Jansen, appearing on his own behalf, questioned Foothills (Alta.) about the possibility of the contractor or others going beyond the right-of-way boundaries during construction. Foothills (Alta.) replied that it was not aware of any reports of such occurrences during

its 1980 construction in Alberta and confirmed that fact after the hearing. Mr. Jansen also expressed dissatisfaction with Foothills (Alta.) in its lack of interest in negotiating an agreement.

Mrs. Louise Elliott, appearing on behalf of herself and Frank Elliott, expressed dissatisfaction with the condition of the NOVA right-of-way on their property at the Rosebud Creek crossing. Foothills (Alta.) stated that the design of its crossing at Rosebud Creek would be re-checked and changed if necessary. Subsequent to the Hearing Foothills (Alta.) reported that no change in design is required.

Mr. Leonard D. Hartzler, appearing on his own behalf, agreed that the additional right-of-way was needed. Mr. Hartzler expressed concern over topsoil conservation and the ability of a contractor to follow the rules and procedures developed by Foothills (Alta.). Mr. Hartzler stated that pipeline companies need more right-of-way at crossings than what they ask for.

Mr. John L. Richter, appearing on his own behalf, questioned Foothills (Alta.) on the differences between the right-of-way, permanent working space and temporary working space as used in the respective agreements.

Mr. G. Murray Rogerson, in a written submission, did not object to the taking of additional lands nor the compensation offered but objected to the wording of the Foothills (Alta.) Grant of Right-of-Way and Working Space Agreements. Mr. Rogerson objected to the provision for more than one pipeline, the provision for the transportation of hydrocarbons other than natural gas, the broad rights of assignability, and the abandonment provisions.

VIEWS OF THE DESIGNATED OFFICER

The evidence presented by Foothills (Alta.) to support its request for additional lands demonstrated a need for the additional lands. The requirement by Foothills (Alta.) for additional permanent right-of-way, in most cases 2.05 metres (6.7 feet), outweighed, in my opinion, the opposition expressed thereto. Similarly, the need for additional temporary working space was demonstrated to my satisfaction. The use of an overlapping right-of-way with NOVA by Foothills (Alta.) as permanent working space is, in my opinion, a responsible and efficient method of reducing the combined width of right-of-way and will reduce the total new land area which would otherwise be used during pipeline construction. I note that many concerns were expressed over topsoil conservation. I find that this issue and those related thereto, are addressed by sections 80, 81 and 82 as well as other sections, of the Northern Pipeline Socio-Economic and Environmental Terms and Conditions for the Province of Alberta. Foothills (Alta.) is by law obliged to meet these requirements and I am satisfied the Agency's field surveillance and inspection staff will give this matter special consideration to ensure compliance therewith during construction. The concern about the construction of the crossing of Rosebud Creek is one which will be given special attention by the Agency's field surveillance and inspection staff. Most of the other concerns expressed were related to matters of compensation. Unfortunately these matters of concern are beyond the scope of this hearing and beyond the authority of the Board.

The submission of Mr. G. Murray Rogerson received due consideration. I concur with Mr. Rogerson's objection to the right-of-way agreements containing provisions for more than one line, the transportation of hydrocarbons other than natural gas and the broad rights of assignability. These points have been dealt with specifically in the

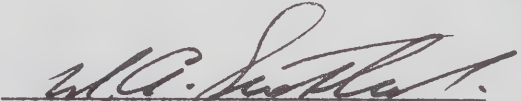
conditions of my order. I note that subsection 84(4) of the Board's Gas Pipeline Regulations requires a company to remove a pipeline from an abandoned right-of-way unless the Board grants permission to leave it in place. I would not be able to go beyond that regulation and I believe that Mr. Rogerson's concern about abandonment is adequately covered thereby.

I conclude that Foothills (Alta.) requires the additional lands requested in these applications for the efficient construction, maintenance and operation of its proposed pipeline.

DECISION

Having considered the evidence and argument presented to me with respect to the two applications of Foothills (Alta.) for leave to take additional lands and having taken into account all matters that appear to me to be relevant, I am satisfied that granting permission to Foothills (Alta.) to take the additional lands requested is necessary for the efficient construction, maintenance and operation of its proposed pipeline. I, therefore have issued orders authorizing the taking of such lands effective as of the closing of this hearing.

The order issued affecting the property of Mr. G. Murray Rogerson contains conditions restricting the land use to a single line of pipe for the transmission of natural gas and restricting assignment of the right-of-way pertaining to the additional lands.


W.A. Scotland
Designated Officer
Northern Pipeline Agency

Calgary, Alberta October 16, 1981

RIGHT-OF-WAY CONFIGURATION (29m) FOR 1067mm EASTERN LEG

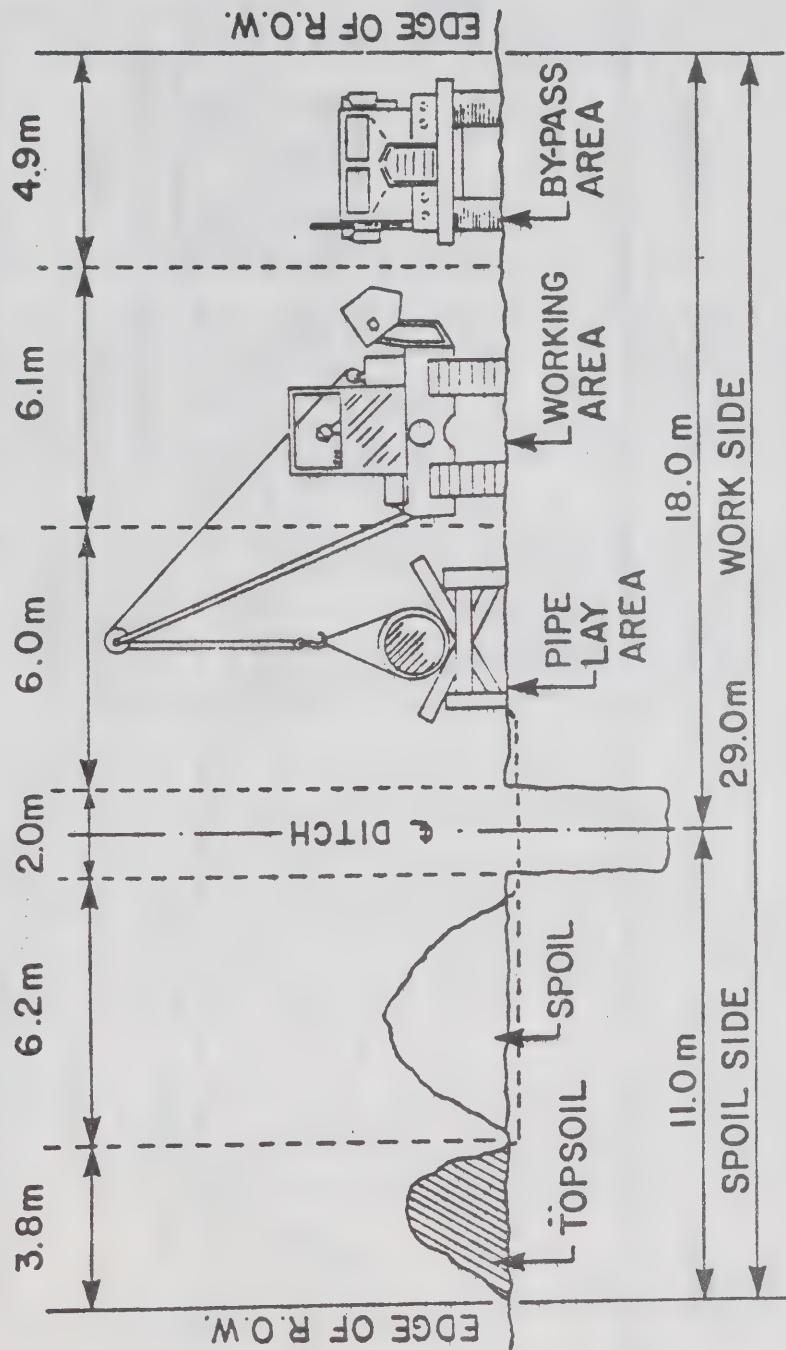
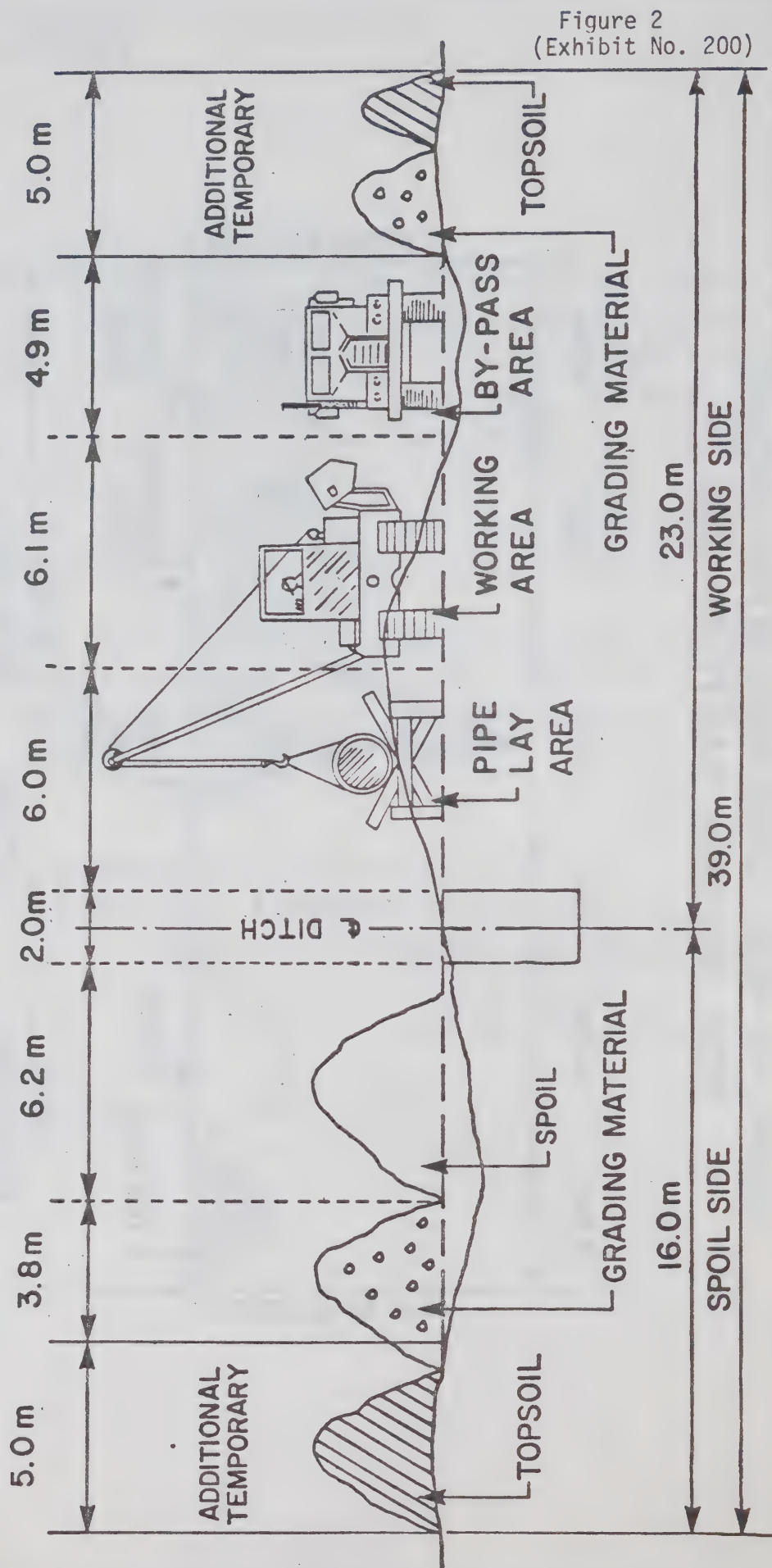


Figure 1
(Exhibit No. 199)

RIGHT OF WAY CONFIGURATION (39m) FOR 1067mm EASTERN LEG



RIGHT OF WAY CONFIGURATION
EASTERN LEG
A.H.P.P. 61

SECTION 74 OF THE NATIONAL ENERGY BOARD ACT

74.(1) Where a company at any time requires more ample space than it possesses or may take under section 73, for the efficient construction, maintenance or operation of a pipeline or for constructing or taking any works or measures ordered by the Board, it may apply to the Board for authority to take, without the consent of the owner, the additional lands required for such purposes.

(2) The Board shall set a time for the hearing of the application which shall be sufficient to permit at least twenty-one days notice thereof to be given by the company to the owners or possessors of the additional lands required, and the company shall give notice thereof accordingly and shall, upon such hearing, furnish to the Board copies of such notices, with affidavits of the service thereof.

(3) The company, upon the application, shall also furnish to the Board such plans, profiles and books of reference and additional information as the Board may require.

(4) After the time stated in such notices, and the hearing of such parties interested as may appear, the Board may, in its discretion and upon such terms and conditions as it deems expedient, authorize in writing the taking for the said purposes of the whole or any portion of the lands applied for.

(5) Copies of the authorization of the Board and of the plan, profile and book of reference, certified as such by the Secretary of the Board shall be deposited with the registrars of deeds of the districts or counties in which the lands are situated.

NATIONAL ENERGY BOARD



OFFICE NATIONAL DE L'ÉNERGIE

ORDER NO. NPO-1-78

IN THE MATTER OF the Northern Pipeline Act; and

IN THE MATTER OF the delegation by the National Energy Board of certain of its powers, duties and functions under the National Energy Board Act, pursuant to subsection 6(1) of the Northern Pipeline Act.

B E F O R E the Board on Thursday, the 27th day of July, 1978.

WHEREAS the Governor in Council having, by Order in Council P.C. 1978-1631, dated the 11th day of May, 1978, and pursuant to subsection 5(4) of the Northern Pipeline Act, designated William Alexander Scotland, an Associate Vice-Chairman of the Board, as a deputy to the Administrator of the Northern Pipeline Agency, effective the 15th day of May, 1978;

AND WHEREAS William Alexander Scotland, as a deputy to the said Administrator, is the "designated officer" within the meaning of subsection 2(1) of the Northern Pipeline Act;

AND WHEREAS the National Energy Board may, by order, in respect of the pipeline referred to in subsection 2(1) of the Northern Pipeline Act, delegate to the designated officer certain of the powers, duties and functions of the Board under the National Energy Board Act, as more particularly set forth in subsection 6(1) of the Northern Pipeline Act;

AND WHEREAS the National Energy Board considers it necessary and desirable to delegate to the designated officer certain of its powers, duties and functions under the National Energy Board Act in respect to the pipeline referred to in subsection 2(1) of the Northern Pipeline Act;

1. IT IS ORDERED THAT the powers, duties and functions of the National Energy Board under the following provisions of the National Energy Board Act, namely:

subsections 29(2) and 29(4)
subsection 32(2)
section 35

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subsections 36(2) and 36(3)
section 37
section 68
section 74
section 76
section 77

be and the same are hereby delegated to the designated officer, solely in respect of the pipeline referred to in subsection 2(1) of the Northern Pipeline Act.

2. AND IT IS FURTHER ORDERED THAT, for the purpose only of exercising and performing the powers, duties and functions of the Board set forth in paragraph 1 of this Order in respect of the pipeline referred to in subsection 2(1) of the Northern Pipeline Act, the powers of the National Energy Board under the following provisions of the National Energy Board Act, namely:

subparagraphs 7(a) and 7(b)
subsection 10(3)
section 11
section 12
subsection 14(2)
section 16
subsection 17(1)
subsection 20(3)

be and the same are hereby delegated to the designated officer.

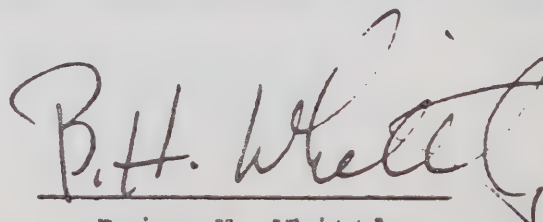
3. AND IT IS FURTHER ORDERED THAT the delegation by the Board of its powers, duties and functions as set out in paragraphs 1 and 2 hereof, shall be effective on the 27th day of July, 1978, in respect of the whole of the pipeline referred to in subsection 2(1) of the Northern Pipeline Act, and shall terminate in respect of each section of the said pipeline on the day on which the Board grants leave to open, pursuant to section 38 of the National Energy Board Act, for each such section of the said pipeline.

NATIONAL ENERGY BOARD
CANADA

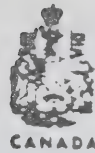
EXAMINED AND CERTIFIED TO BE A TRUE COPY
OF AN ORDER OF THE NATIONAL ENERGY
BOARD. MAY - 9 1980
DATED

SECRETARY, NATIONAL ENERGY
BOARD, OTTAWA, CANADA

NATIONAL ENERGY BOARD


Brian H. Whittle
Secretary

NATIONAL ENERGY BOARD



OFFICE NATIONAL DE L'ÉNERGIE

ORDER NO. NP-MH-4-81

IN THE MATTER OF the National Energy Board Act
and the Regulations made thereunder; and

IN THE MATTER OF two (2) applications made by
Foothills Pipe Lines (Alta.) Ltd. (hereinafter
called "the Applicant") for authority to take,
without the consent of the owners, certain
additional lands required for the construc-
tion, maintenance and operation of the pipe-
line of the Applicant pursuant to the provi-
sions of section 74 of the said Act; and

IN THE MATTER OF ORDER NO. NPO-1-78, dated the
27th day of July, 1978, made by the National
Energy Board pursuant to the provisions of
subsection 6(1) of the Northern Pipeline Act,
whereby the Board did delegate to William
Alexander Scotland as Designated Officer,
Northern Pipeline Agency, certain of its
powers, duties and functions under the
National Energy Board Act, including the
provisions of section 74 of the said Act, in
respect of the pipeline referred to in
subsection 2(1) of the Northern Pipeline Act.

Agency Files No. 8266, No. 8267, No. 8268 and
No. 8272.

B E F O R E the Designated Officer on Wednesday, the 3rd day of June,
1981.

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UPON reading the applications, both dated the 25th day of May, 1981, made by the Applicant:

IT IS ORDERED THAT

1. The Application will be heard in the Great War Memorial Hall located at the corner of 2nd Street and 3rd Avenue, in the Town of Strathmore, in the Province of Alberta, on the 10th day of July, 1981, commencing at the hour of 9:30 A.M. local time.
2. Notice of the hearing in the form prescribed by the Designated Officer, Northern Pipeline Agency, as set forth in the Notice attached to and which forms part of this Order shall be published not later than the 18th day of June, 1981, in one issue each of the "Calgary Herald" and the "Calgary Sun" both in the City of Calgary, and the "Medicine Hat News" in the City of Medicine Hat, all in the Province of Alberta, and as soon as possible in the "Canada Gazette".
3. Notice of the hearing shall forthwith be given by the Applicant by service of a true copy of this Order and of the applications filed, upon the Attorney General of the Province of Alberta, the Canadian Federation of Agriculture (at 111 Sparks Street, Ottawa, Ontario), Unifarm (at 9934-106th Street, Edmonton, Alberta) and the owners or possessors of the additional lands required, not less than twenty-one (21) days prior to the date set down for the hearing, and the Applicant shall, upon such hearing, furnish to the Designated Officer, Northern Pipeline Agency, copies of such notices with the affidavits of the service thereof.
4. Any respondent or intervenor intending to oppose or intervene in the applications shall file, on or before the 3rd day of July, 1981, with the Designated Officer, Northern Pipeline Agency, four (4) copies

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of a written statement containing his/her reply or submission, together with any supporting information, particulars or documents, which shall contain a concise statement of the facts from which the nature of the respondent's or intervenor's interest in the proceedings may be determined, which may admit or deny any or all of the facts alleged in the application, and which shall be endorsed with the name and address of the respondent or intervenor or his/her solicitor to whom communications may be sent. Any respondent or intervenor shall, in addition, serve three (3) copies of his/her reply or submission and supporting information, particulars or documents, upon the Applicant and one (1) copy each upon the Attorney General of the Province of Alberta, the Canadian Federation of Agriculture (at 111 Sparks Street, Ottawa, Ontario) and Unifarm (at 9934-106th Street, Edmonton, Alberta).

4. Any interested party may examine a copy of the application and the submissions filed therewith at the office of:

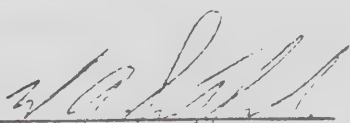
Northern Pipeline Agency
4th Floor - Shell Centre
400 Fourth Avenue South West
Calgary, Alberta T2P 0J4

or at the office of the Applicant's Agent:

The Alaska Project Division of
NOVA, AN ALBERTA CORPORATION
104 Fourth Avenue South East
Calgary, Alberta T2P 2M7
(Please contact D.T. Rigby,
Supervisor, Regulatory Affairs).

Dated at the City of Calgary, in the Province of Alberta,
this 3rd day of June, 1981.

NATIONAL ENERGY BOARD


W.A. Scotland
Designated Officer,
Northern Pipeline Agency.

NATIONAL ENERGY BOARD
NOTICE OF HEARING

TAKE NOTICE that pursuant to the National Energy Board Act and the Regulations made thereunder, the Designated Officer, Northern Pipeline Agency, has ordered a hearing to be held in the Great War Memorial Hall, located at the corner of 2nd Street and 3rd Avenue, in the Town of Strathmore, in the Province of Alberta, on the 10th day of July, 1981, commencing at the hour of 9:30 A.M. local time, to hear the applications of Foothills Pipe Lines (Alta.) Ltd. for leave to take, without the consent of the owners, certain additional lands pursuant to the provisions of section 74 of the Act, consisting of,

- (a) "Additional Right-of-Way", containing by admeasurement approximately 25.8 hectares (about 63.9 acres),
- (b) "Permanent Working Space", containing by admeasurement approximately 56.3 hectares (about 136.6 acres), and
- (c) "Temporary Working Space", containing by admeasurement approximately 74.2 hectares (about 183.5 acres),

in two areas,

- (i) commencing at a point within the South West Quarter of Section 28, Township 30, Range 2, West of the 5th Meridian, which point is located approximately 8.9 kilometres (5.5 miles) northwest of the Town of Carstairs, and extending in a southeasterly direction to a point within the South East Quarter of Section 1, Township 24, Range 18, West of the 4th Meridian, which point is located approximately 15 kilometres (9.3 miles) northwest of the Hamlet of Gem, all in the Province of Alberta, and

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- (ii) commencing within the South West Quarter of Section 21, Township 20, Range 8, which point is located approximately 9.7 kilometres (6 miles) southeast of the Hamlet of Jenner, and extending in an easterly direction to a point within the North West Quarter of Section 11, Township 20, Range 2, which point is located approximately 4.0 kilometres (2.5 miles) west of the South Saskatchewan River, all West of the 4th Meridian, in the Province of Alberta,

required for the efficient construction, maintenance and operation of the pipeline referred to in subsection 2(1) of the Northern Pipeline Act and as more particularly described in the said applications.

AND THE DESIGNATED OFFICER, NORTHERN PIPELINE AGENCY, HAS FURTHER ORDERED THAT:

1. Any respondent or intervenor intending to oppose or intervene in the applications shall file, on or before the 3rd day of July, 1981, with the Designated Officer, Northern Pipeline Agency, four (4) copies of a written statement containing his/her reply or submission, together with any supporting information, particulars or documents, which shall contain a concise statement of the facts from which the nature of the respondent's or intervenor's interest in the proceedings may be determined, which may admit or deny any or all of the facts alleged in the applications, and which shall be endorsed with the name and address of the respondent or intervenor or his/her solicitor to whom communications may be sent. Any respondent or intervenor shall, in addition, serve three (3) copies of his/her reply or submission and supporting information, particulars or documents, upon the Applicant and one (1) copy each upon the Attorney General of the Province of Alberta, the Canadian Federation of Agriculture (at 111 Sparks Street, Ottawa, Ontario) and Unifarm (at 9934 - 106th Street, Edmonton, Alberta).

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2. Any interested party may examine a copy of the applications and the submissions filed therewith at the office of:

Northern Pipeline Agency
4th Floor - Shell Centre
400 Fourth Avenue South West
Calgary, Alberta
T2P 0J4

or at the office of the Applicant's Agent:

The Alaska Project Division of
NOVA, AN ALBERTA CORPORATION
104 Fourth Avenue South East
Calgary, Alberta
T2P 2M7
(Please contact D.T. Rigby
Supervisor, Regulatory Affairs).

DATED at the City of Calgary, in the Province of Alberta,
this 3rd day of June, 1981.

NATIONAL ENERGY BOARD

"W. A. Scotland"
W. A. Scotland
Designated Officer,
Northern Pipeline Agency.

